

No. S263972

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

CITY OF SANTA MONICA,
Defendant and Appellant,

v.

PICO NEIGHBORHOOD ASSOCIATION; MARIA LOYA,
Plaintiffs and Respondents.

**CITY OF SANTA MONICA'S MOTION FOR JUDICIAL
NOTICE; SUPPORTING MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF KAHN A. SCOLNICK;
AND [PROPOSED] ORDER**

After a Decision by the Court of Appeal
Second Appellate District, Division Eight, Case No. B295935
Los Angeles County Superior Court Case No. BC616804
The Hon. Yvette M. Palazuelos, Judge Presiding
Gov't Code, § 6103

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MOTION FOR JUDICIAL NOTICE

The City of Santa Monica respectfully requests that this Court take judicial notice, under Evidence Code sections 452 and 459 and California Rules of Court, rules 8.520(g) and 8.252(a), of the following materials, which are cited in the City's answer brief and are relevant to the question whether the City is liable under the California Voting Rights Act:

I. Certified transcript of oral argument made before Court of Appeal

On June 30, 2020, the Court of Appeal heard oral argument in this case. The City obtained the official audio recording from the Court of Appeal, which was then transcribed by Veritext Legal Solutions and certified as true and accurate on August 31, 2020.

II. 2020 City Council election results

The City held an at-large election for five open seats on its City Council on November 3, 2020. The results—the official canvass certificates and official statements of votes cast by precinct—are certified as true and correct by the Registrar-Recorder/County Clerk of the County of Los Angeles.

III. Candidates' addresses or neighborhoods of residence on their candidate statements for the 2020 Council election

Council candidates have the option to make official statements that are presented by the City on its official elections website, smvote.org. Those statements often contain the candidates' addresses or neighborhoods of residence.

* * *

The Court may take judicial notice of the documents listed above under California Rules of Court, rules 8.520(g) and 8.252(a). The documents:

- (A) are relevant to the City’s argument that there is no vote dilution in City Council elections, and responsive to plaintiffs’ arguments that “Latino candidates” almost “universally” lose City Council elections in the at-large system, that the Council does not adequately represent the “Pico Neighborhood,” and that the at-large system deters minority candidates from running (e.g., OB at 51, 64-65);
- (B) were not presented to the trial court, because they postdate the trial court’s judgment;
- (C) are subject to judicial notice under Evidence Code section 452, subdivision (h), because the facts they contain “are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy”; and

(D) relate to an oral argument and an election postdating the trial court's judgment.

DATED: March 22, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Kahn Scolnick
Kahn Scolnick

*Attorneys for Defendant and
Appellant City of Santa Monica*

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should take judicial notice of (1) the certified transcript of the oral argument in this case before the Court of Appeal, (2) the official results of the 2020 Santa Monica City Council elections, and (3) the official statements made by the five candidates who won that election, which list those candidates' addresses or neighborhoods of residence.

All of these items are judicially noticeable under Evidence Code section 452, subdivision (h), because they are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

All three items are relevant to the issues before this Court. The certified transcript shows the arguments plaintiffs made below, and it highlights the limitations of the arguments they have made here. The election results and the candidate statements show who is currently sitting on the Council, which bears on plaintiffs' claims that certain groups and neighborhoods are under-represented and that their preferred remedy—the districting scheme approved by the trial court—should be implemented without delay.

Specifically, plaintiffs contend that as a result of its at-large election system, the City has too few Latino representatives and too few representatives who live in the Pico Neighborhood, and that a district-based election system would fix both of those

issues. But the City currently has three Latino Councilmembers and at least two Councilmembers who reside in the Pico Neighborhood, all of whom won or retained their seats in the most recent at-large election. Switching to a district-based system would mean that the City would lose at least one Latino Councilmember and at least one Councilmember from the Pico Neighborhood, since these Councilmembers would be forced to run against each other in a winner-takes-all district.

II. ARGUMENT

A. The Court should take judicial notice of the certified transcript of the oral argument before the Court of Appeal.

On June 30, 2020, the Court of Appeal heard oral argument in this case. The City obtained the official audio recording from the Court of Appeal, which was then transcribed by Veritext Legal Solutions and certified as true and accurate on August 31, 2020. (Scolnick Declaration, ¶¶ 1-3.)

The certified reporter's transcript (Scolnick Decl., Exhibit A) is judicially noticeable because it is "not reasonably subject to dispute" and is "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h).) The accuracy of the transcript can be verified against the official audio recording of the oral argument. Courts also regularly take notice of reporter's transcripts. (E.g., *People v. Meloney* (2003) 30 Cal.4th 1145, 1152, fn. 3.)

The transcript is relevant to the question whether plaintiffs

have proven dilution, an element of the CVRA, and whether plaintiffs' proposed test for dilution is judicially manageable. In its answer brief, the City cites the portion of the transcript in which the Court of Appeal asked plaintiffs' counsel to draw a principled line between valid and invalid claims that a minority group has been denied the right to influence the outcome of elections; counsel was unable to do so. (Ans. Br. at 17 [citing Ex. A at 28-30].)

B. The Court should take judicial notice of the certified election results of the 2020 election for Santa Monica's City Council.

The City held an at-large election for five open seats—four 4-year seats and one 2-year seat—on its City Council on November 3, 2020. The winners were Phil Brock, Gleam Davis, Kristin McCowan, Christine Parra, and Oscar de la Torre. Three of those five winning candidates (Councilmembers Davis, Parra, and de la Torre) are Latino. (OB at 25; Ans. Br. at 56; 25AA11156.)

The 2020 election results (Scolnick Decl., Exhibit B) are judicially noticeable because they are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) The election results are certified as true and correct by the Registrar-Recorder/County Clerk of the County of Los Angeles. The results are also readily accessible on a website, www.smvote.org, maintained by the City Clerk for the City of Santa Monica.

The 2020 election results are relevant because this case is about election outcomes—specifically, whether Santa Monica’s at-large election system dilutes the voting strength of Latino voters in City Council elections. Plaintiffs’ theory of vote dilution is that Latino voters in Santa Monica prefer only Latino candidates, that Latino candidates have not been elected to the Council in adequate numbers, and that an immediate switch to districts is necessary so that more Latino candidates would be elected. (E.g., OB at 64; see also *id.* at 57 [urging the Court not to remand to the Court of Appeal but to reinstate the trial court’s order requiring a switch to district-based elections, because “[f]urther delay is unnecessary and unwarranted; Santa Monica’s Latino community has already waited far too long for their voting rights.”].)

The present composition of the Council is relevant in responding to those arguments. As noted above, three of the five winning candidates in the most recent at-large election are Latino.

In addition, the 2020 election results are also relevant to plaintiffs’ argument that “at-large election systems often deter minority candidates, who would be preferred by minority voters, from running,” such that a switch to districts would encourage more minority candidates to run. (OB at 51.) But in the November 2020 at-large election for a 4-year Council seat, roughly one-quarter of the candidates (5 of 21) were Latino (Davis, Parra, de la Torre, Jara, Muntaner, and Gomez)—nearly double Latinos’ 13.6% share of Santa Monica’s voting population.

(See OB at 25; 25AA11103, RT8798:22-23, 25AA11143, 25AA11156; Ans. Br. at 56.)

Plaintiffs may contend that the results of elections postdating the filing of their complaint or trial are irrelevant. But that is not what the CVRA says. It instead provides that elections predating the filing of an action “are *more probative* to establish the existence of racially polarized voting than elections conducted after the filing of an action.” (Elec. Code, § 14028, subd. (a), italics added.) That pre-complaint elections are “more probative” does not mean that post-complaint elections are irrelevant. If it did, plaintiffs would not be able to repeatedly invoke now-Councilmember de la Torre’s defeat in the 2016 election, which post-dated the filing of this case. (E.g., OB at 25-26, 62-63.)

The CVRA also addresses the evidentiary weight of post-filing elections only with respect to the question of “racially polarized voting.” (Elec. Code, § 14028, subd. (a).) But the City is not offering the 2020 election results to support its racially-polarized-voting argument. Nor could it. Because there has been no statistical analysis of those election results, it is not clear which candidates were preferred by Latino voters. (The City does not follow plaintiffs’ and the trial court’s unconstitutional stereotyping approach of presuming that Latino voters vote only for Latino-surnamed candidates, or that white voters rarely do.) Instead, the City is offering the 2020 election results solely for purposes of the dilution question on which this Court granted review.

Nothing in the CVRA suggests that courts cannot look to post-filing elections when examining dilution. Nor would such a rule make sense where, as here, plaintiffs’ entire theory of dilution rests on demonstrably false premises about the ability of Latino candidates, or candidates from the Pico Neighborhood, to be elected in the at-large system—both of which are refutable by reference to judicially noticeable facts. Particularly if the Court accepts plaintiffs’ invitation to apply a newly announced “dilution” standard to the facts of this case in the first instance (OB at 56-57), then the Court ought to be able to consider the indisputable effect that district-based elections would have on the current composition of the Council.

In short, this court should take judicial notice of the 2020 election results. Courts regularly take notice of such results. (E.g., *Dudum v. Arntz* (9th Cir. 2011) 640 F.3d 1098, 1101, fn. 6; *Huntington Beach City Council v. Superior Court* (2002) 94 Cal.App.4th 1417, 1424, fn. 2; *Chambers v. Ashley* (1939) 33 Cal.App.2d 390, 391.) This Court has also granted judicial notice of election results and other election-related materials postdating the trial court’s judgment. (E.g., *Edelstein v. City & County of San Francisco* (2002) 29 Cal.4th 164, 170-71 & fn. 3.)

C. The Court should take judicial notice of candidates’ addresses or neighborhoods of residence on their official Council candidate statements.

Council candidates have the option to make official statements that are presented by the City on its official elections website, smvote.org. (Scolnick Decl., ¶ 5.) The candidate

statements frequently disclose the candidates' addresses or neighborhoods of residence. (*Ibid.*)

The candidates' addresses or neighborhoods of residence listed on their candidate statements (Scolnick Decl., Exhibit C) are judicially noticeable because they are “not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) The statements are maintained on the City's elections website, www.smvote.org, which is maintained by the City Clerk.

The candidates' addresses or neighborhoods of residence on their candidate statements are relevant because they show that at least two of the candidates who won in the 2020 election—Councilmembers de la Torre and Parra—live within the boundaries of the Pico Neighborhood. (Scolnick Decl., ¶ 5.)¹ Plaintiffs contend the Pico Neighborhood has been under-represented on the Council and should have its own district in a district-based election system. (OB at 65; 25AA11000 [Pico Neighborhood District map proposed by plaintiffs].) But if the City switched to district-based elections, the Pico Neighborhood would have at most one representative—and the City would also necessarily lose one or two of its Latino Councilmembers, because two of those Councilmembers reside in the Pico Neighborhood and would need to run against each other (and both might lose).

¹ Councilmember McCowan also lives there, but she does not list her address or neighborhood on her candidate statement.

CONCLUSION

The City respectfully requests that the Court grant its motion for judicial notice in support of its answer brief.

DATED: March 22, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Kahn Scolnick
Kahn Scolnick

*Attorneys for Defendant and
Appellant City of Santa Monica*

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DECLARATION OF KAHN A. SCOLNICK

I, Kahn A. Scolnick, declare as follows:

I am a partner with the law firm Gibson, Dunn & Crutcher, LLP, counsel for the City of Santa Monica in this case. I am authorized to practice law in the State of California and submit this declaration in support of the City's motion for judicial notice. What I have set out in this declaration is based on my personal knowledge, unless stated on information and belief. If called to testify about the facts set out below, I could and would do so competently.

1. Attached to this declaration as Exhibit A is the certified transcript of the oral argument in this case that was held before the Court of Appeal on June 30, 2020.
2. The City requested a copy of the audio recording of the oral argument from the Court of Appeal on August 5, 2020.
3. After receiving the audio recording from the court, the City commissioned Veritext Legal Solutions to transcribe it. Veritext produced a certified transcript on August 31, 2020.
4. Attached to this Declaration as Exhibit B are true and correct copies of excerpts from the Official Canvass Certificates and Official Statements of Votes Cast by Precinct for the City of Santa Monica election held in November 2020. Those election returns show

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that Phil Brock, Gleam Davis, Christine Parra, and Oscar de la Torre won four-year terms on the Council, and that Kristin McCowan won a two-year term on the Council.

5. Attached to this declaration as Exhibit C are true and correct copies of the official statements of the five candidates who won Council seats in 2020—Phil Brock, Gleam Davis, Kristin McCowan, Christine Parra, and Oscar de la Torre. Candidates may submit an official statement to the City’s official election website, smvote.gov, which is maintained by the City Clerk. Councilmembers Brock, Davis, McCowan, Parra, and de la Torre all did so. Councilmembers Parra and de la Torre disclosed in their statement where they live; Councilmember de la Torre listed his home address, and Councilmember Parra listed her neighborhood. Both live within the Pico District proposed by plaintiffs. (25AA11000; see also RT6069:7-9 [Councilmember de la Torre testifying that he “live[s] in the Pico neighborhood in the City of Santa Monica”].) Councilmember McCowan did not list her home address, but I am informed and believe that she also lives in the Pico Neighborhood.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 2021, in La Cañada Flintridge,
California.

DATED: March 22, 2021



Kahn A. Scolnick

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EXHIBIT A

1 COURT OF APPEAL FOR THE STATE OF CALIFORNIA
2 SECOND APPELLATE DISTRICT - DIVISION EIGHT

3 -----
4 NO. B295935

5 (Los Angeles County Super. Ct. No. BC616804)
6 -----

7 PICO NEIGHBORHOOD ASSOCIATION,

8 Plaintiffs and Respondents,

9 v.

10 CITY OF SANTA MONICA,

11 Defendant and Appellant.
12 -----

13
14
15 A P P E A R A N C E S:

16 Theodore J. Boutrous Jr., Gibson, Dunn & Crutcher

17 for Defendant and Appellant

18 Kevin I. Shenkman, Shenkman & Hughes

19 for Plaintiffs and Respondents
20
21

22 B E F O R E:

23 HON. TRICIA BIGELOW

24 HON. JOHN SHEPARD WILEY, JR.

25 HON. ELIZABETH A. GRIMES

1 HON. TRICIA BIGELOW: No. 12 is Pico
2 Neighborhood Association, et al. v. the City of
3 Santa Monica. The panel on this matter is
4 comprised of Justices Wiley, Bigelow, and Grimes,
5 and I see we just need Justice Wiley to reappear,
6 and there he is. Excellent. Okay.

7 Mr. Boutrous, present, and can we hear
8 you, on behalf of these appellants?

9 MR. BOUTROUS: Yes, Your Honor. Can
10 you hear me okay?

11 HON. TRICIA BIGELOW: Yes. Yes, thank
12 you. And Mr. Shenkman on behalf of Pico
13 Neighborhood Association?

14 MR. SHENKMAN: Yes, Your Honor.

15 HON. TRICIA BIGELOW: Okay, great.
16 Thank you so much. Let's see, in this case we
17 have issued a tentative decision that we're
18 inclined to reverse the Trial Court's ruling for
19 the reasons that have been outlined in the
20 tentative decision. In light of that, counsel
21 for City of Santa Monica, sir, you may choose to
22 waive your opening argument and solely act on and
23 give your 30 minutes to a reply or, if you wish,
24 you can proceed now and split that up, sir. How
25 would you like to proceed?

1 MR. BOUTROUS: Your Honor, I would -- I
2 think I'd like to start out and reserve 10
3 minutes for rebuttal.

4 HON. TRICIA BIGELOW: Okay. Please
5 proceed.

6 MR. BOUTROUS: Thank you, Your Honor.
7 We very much appreciate the Court's thorough and
8 -- summary of its tentative opinion. We
9 respectfully submit that the Court should adopt
10 that tentative reasoning in its final opinion and
11 reverse the judgment for the reasons stated. In
12 short, the tentative is entirely correct that the
13 Trial Court's conclusions concerning both
14 dilution and discriminatory intent depend on
15 legal error and are not supported by legally
16 sufficient evidence.

17 Starting with the dilution point, we
18 believe that the dilution element is required by
19 the California Voting Rights Act and the federal
20 and state constitutions. The tentative correctly
21 concludes that a plaintiff must prove dilution to
22 make out a Voting Rights Act claim. Section
23 14027 requires the impairment of a protected
24 class' ability to elect a candidate to be as a
25 result of a dilution of the rights of the voters

1 who are members of a protected class.

2 And that plain text speaks of the
3 language of harm, dilution, and causation as a
4 result of. As the tentative notes, the -- Pico
5 argued that Section 14028 doesn't mention
6 dilution, but that doesn't resolve the issue
7 because dilution is the injury that is targeted
8 by the California Voting Rights Act and it's the
9 compelling interest that allows the Courts to
10 consider race in decision making under the
11 statute and both --

12 HON. TRICIA BIGELOW: I have a
13 question.

14 MR. BOUTROUS: Yes.

15 HON. TRICIA BIGELOW: How should we
16 define dilution?

17 MR. BOUTROUS: I think, Your Honor, it
18 must be -- if we look to Gingles and I think the
19 tentative talks about it, in the sense that it
20 must be -- the system that's in existence must
21 weaken. One must weaken the right to vote and
22 make it so that there's inequality in terms of
23 the minority group's ability to vote, and we just
24 don't have that here.

25 As the tentative points out, this 30

1 percent district that was created would not give
2 Latinos any ability to elect the candidates of
3 their choice that would more favorably compare
4 with what they can do now, and therefore, there's
5 been no dilution.

6 What the -- Pico's arguing for is not
7 dilution, but a requirement that in drawing
8 districts or creating electoral system, the
9 lawmakers must act to fortify or sort of enhance,
10 is the language that the Trial Court used, and
11 the Supreme Court's decision in Bartlett, the
12 U.S. Supreme Court's decision, talked about that
13 very point, that the voting -- Federal Voting
14 Rights Act and, we submit, the California Voting
15 Rights Act, is meant to create equality and to
16 ban systems that dilute the vote, but not create
17 some -- in the words of the Supreme Court, a rule
18 that requires the best possible chance or to
19 change things using racial classification beyond
20 combating dilution.

21 I think the tentative is absolutely
22 right on the text of the statute, as I mentioned.
23 The 14028 doesn't mention dilution, but the
24 statute requires proof of a violation of both
25 14027 and 14028, the latter being the racially

1 polarized voting requirement, and so it's clear
2 dilution must be proven, and Pico's argument
3 would just flatly contradict the text of the
4 statute and would render the -- as a result of
5 dilution language, and Section 14027 surplusage.

6 So we believe that it's required by the
7 statute, dilution, but as I mentioned also the
8 federal constitution that there has to be a
9 compelling state interest for Courts to order
10 racial classifications or changes in voting
11 systems, and that's provided by the need to
12 combat dilution.

13 So the second point that the tentative,
14 I think, gets absolutely correct is that there's
15 no valid proof of dilution here. A 30 percent
16 district will not provide a predicate for
17 anything different than was under the current
18 system. The numbers are simply too small and the
19 population of Latino voting group is dispersed
20 through the city, and there's no proof that any
21 alternative system, including districts, would
22 give Latinos greater power to elect the
23 candidates of their choice.

24 As for Pico's argument number two, as
25 the tentative refers to it, that because the

1 statute does allow for influence claims, the 30
2 percent somehow could qualify as an influence
3 claim, but that stretches the word influence
4 beyond any recognition and any meaning, and as
5 the tentative points out, would create absurd
6 results and is thus untenable.

7 It doesn't change things for -- there'd
8 be 30 percent as opposed to 14 percent in the
9 district. It's too far from a majority, and that
10 would be true under any alternative system,
11 because of the numbers. So -- and again, we
12 agree with the tentative's point that, the fact
13 that the statute in California is broader than
14 the federal statute, it does include influence.
15 It does not require majority/minority district,
16 but that doesn't mean influence. That doesn't
17 mean influence just can mean any small bit of
18 influence.

19 And as we had pointed out and the
20 tentative mentions, we think that one -- that a
21 plaintiff might be able to make that a claim for
22 influence by showing a 48 percent district,
23 something close to 50 percent, but 30 percent
24 just isn't close.

25 HON. TRICIA BIGELOW: So then you would

1 say influence must be something that changes
2 their ability to win, like it's a vote?

3 MR. BOUTROUS: Exactly. Exactly, Your
4 Honor.

5 HON. TRICIA BIGELOW: Going back to
6 dilution, you said that you think dilution should
7 be find -- I want to make sure I have the cite --
8 to weaken a minority so that a minority's voting
9 capability so that there's inequality to achieve
10 electoral success. Let me just preface this by
11 telling you, I feel a little uncomfortable that
12 the legislature didn't define dilution and that
13 we are left to somewhat define it and I'm
14 wondering what -- I mean, how you would help us
15 with that and what you would submit on, in terms
16 of authority for doing so.

17 MR. BOUTROUS: Yeah, Your Honor, I
18 think the tentative does a nice job of pointing
19 towards just the plain meaning. Dilution means
20 weakening and watering down the rights, and
21 Gingles, the Supreme Court's decision in Gingles
22 looks to compare the current system with an
23 alternative and in effect comparison that allows
24 one to determine whether the current system is
25 diluting the right to vote.

1 And that's why here, if you look to
2 districts, districts don't provide any greater
3 power because the population is so far below a
4 majority. In passing, the trial judge in the
5 statement of decision and Pico in its brief
6 mentioned alternative at-large systems, but
7 again, the numbers, when we look at the number of
8 turnouts and the population of voters in Santa
9 Monica de-staggering the elections, those sort of
10 things, aren't going give Latinos any better
11 chance to elect the candidates of their choice
12 than they have.

13 So it's that comparison, Your Honor,
14 and dilution means, under some other system, that
15 group would be able to vote in their choice if
16 they all voted cohesively and there just isn't an
17 alternative here and it really comes down to the
18 numbers. And Santa Monica wants to have -- yes.

19 HON. TRICIA BIGELOW: Can I interrupt?
20 Because it seems like both your definition or the
21 definitions proposed of weaken and influence, in
22 order for this to have been a winning argument,
23 your argument would be that they definitely have
24 to reach a point where they can elect a different
25 candidate -- successfully elect a different

1 candidate, they're strong enough in their voters'
2 rights to be able to do that, right?

3 MR. BOUTROUS: Correct, Your Honor.

4 HON. TRICIA BIGELOW: Because if you
5 look at the word dilution, right, and you say it
6 has a plain meaning, well, you put one drop of
7 water in a glass of milk and you've diluted it.
8 Not a lot, but where on the scale does that go,
9 and I guess that you're saying to a point where
10 it causes a win.

11 MR. BOUTROUS: Yes, Your Honor. There
12 has to be a demonstrated evidentiary record that
13 a different system would allow that minority
14 group, if they voted cohesively, to enact the
15 person that they wanted, and there just -- with a
16 30 percent majority in a district or a 14 percent
17 in the city, that's just impossible.

18 And so the fact that occasionally
19 Latino-preferred candidates do not win is a
20 product of the small numbers -- of the small
21 population and, as I was about to say, Santa
22 Monica is an inclusive, progressive community.
23 It wants to have a diverse community. It wants
24 to ban discrimination, but when the numbers are
25 at hit level, everyone gets their vote and the --

1 and so if there's no dilution, it's just a
2 product of the numbers.

3 And so I think the tentative gets it
4 right the way it has approached things, here, and
5 again, the Bartlett case from the Supreme Court
6 points to the fact that the influence districts,
7 as a federal matter, raise serious constitutional
8 concerns because it puts the Court in the
9 position of having to really speculate and try to
10 predict racial behavior and draw racial lines in
11 a very subjective, unpredictable way, and that
12 creates problems.

13 It turns the Voting Rights Act on its
14 head. Yes, Justice Wiley.

15 HON. JOHN SHEPARD WILEY, JR.: Only
16 with a plurality right, non-majority?

17 MR. BOUTROUS: That's correct, Your
18 Honor. Justices Scalia and Thomas would've gone
19 further and really said there were no such claims
20 in terms of Section 2.

21 They would've -- they disagreed with
22 Gingles, and so they would've gone farther, but
23 Justice Kennedy's opinion was very careful to
24 ensure that the regime did what the Congress
25 intended, combats both dilution, but was very

1 wary from a constitutional perspective, as the
2 Court knows, but weighed into further efforts for
3 Courts to get in the business of trying to manage
4 voter participation based on racial
5 classification.

6 HON. JOHN SHEPARD WILEY, JR.: And
7 Bartlett --

8 MR. BOUTROUS: And -- Yes, Your Honor.

9 HON. JOHN SHEPARD WILEY, JR.: And
10 Bartlett does not --

11 MR. BOUTROUS: Yes, Your Honor.

12 HON. JOHN SHEPARD WILEY, JR.: Bartlett
13 is not controlling authority one way or the
14 other, right?

15 MR. BOUTROUS: Well, here in our case,
16 that the statute from interpreting the California
17 Voting Rights Act, it is not because the
18 California legislature did include influence, and
19 so the question is, what type of influence would
20 comport with the federal constitution, and I
21 think the way we've looked at it is there's a way
22 to reconcile the constitutional concerns, the
23 difference in our California statute, by saying
24 that a plaintiff may not be able to show a 50
25 percent district could be formed, but -- so that

1 strict standard that the Federal Courts have
2 established, California has departed from it, but
3 you have to be close, so there's a realistic
4 showing. And the Court doesn't have to confront
5 that here, as the tentative notes, because the 30
6 percent does not even come close.

7 HON. JOHN SHEPARD WILEY, JR.: I guess
8 you'd agree, apart from being merely persuasive
9 and merely a plurality, as a matter of state law,
10 the meaning of this state statute where we're
11 looking at an undefined term in the statute,
12 influence, do you agree that the most reasonable
13 inference from the fact that the legislature did
14 not define the term influence as it did not
15 define the term dilution, is the legislature
16 wanted courts on a common law basis, the way they
17 always do, to figure it out?

18 MR. BOUTROUS: Yes, Your Honor, I do,
19 and I think looking at the plain language of the
20 statute, looking at other judicial
21 interpretations, but I do agree, Your Honor. I
22 think that as to racially polarized voting, there
23 was a specific reference to federal standards,
24 but as to dilution under California law, I think
25 that's correct, that this Court is to interpret

1 that term in a way that comports with its
2 plaining meaning and with other considerations.

3 HON. JOHN SHEPARD WILEY, JR.: When the
4 United States Congress passed the Sherman
5 Antitrust Act in 1890, outlawing the act of
6 monopolizing, Congress didn't define the term
7 monopoly or monopolize. The Federal Courts have
8 been wrestling with the meaning of that term on
9 their own since 1890. This is the same thing,
10 right?

11 MR. BOUTROUS: I think so, Your Honor,
12 that here we have the fundamental -- the Court
13 would look to the purpose of the statute, which
14 is to ensure equality, the meaning of the word
15 dilution.

16 I think the Court can draw on
17 principles from other -- from the federal
18 standards, as I mentioned, in Gingles, and
19 determine what dilution means for these purposes,
20 and I think it means it's your right to vote,
21 your right to equality has been diminished, it's
22 been diluted, in such a way that under a
23 different system, that minority group would be
24 able to vote in candidates, when they can't under
25 this system. And I think the tentative does a

1 nice job of parsing through that, based on those
2 principles, and so that's why we believe the
3 Court should adopt that reasoning.

4 And just briefly on the equal
5 protection claim, the tentative is right that the
6 Trial Court erred from a legal perspective, both
7 on the standard for intent and the standard for
8 evaluating the evidence as the Supreme Court in
9 Feeney made clear, your awareness or knowledge
10 regarding a potential disparate impact is not
11 intentional discrimination under equal protection
12 clause.

13 It has to be proof of purposeful
14 discrimination, like the purpose -- creating an
15 electoral system for the purpose of
16 discriminating on race in order to dilute the
17 power of the minority group. The ALI Model Penal
18 Code does, indeed, do a very nice job of
19 distinguishing between purpose and knowledge.
20 The Trial Court, however, ignored that
21 distinction and the statement of decision
22 repeatedly talks about awareness, knowledge,
23 understanding, and that is pure legal error, as
24 the tentative, I think, recognizes.

25 And then the tentative also recognized

1 correctly that this Court is in the same position
2 as the Trial Court. These were documents, news
3 clippings, a report, a videotape. This Court's
4 in the same position in analyzing those materials
5 as the Trial Court. There's no need to defer to
6 the Trial Court. There's also no need to defer
7 to expert testimony.

8 I think this is a little bit like the
9 chase video in the Scott case, because the video
10 itself just totally contradicts what the Trial
11 Court found --

12 HON. JOHN SHEPARD WILEY, JR.: --
13 saying, it's a little like?

14 MR. BOUTROUS: Totally like. Excuse
15 me. I -- it's exactly like.

16 HON. JOHN SHEPARD WILEY, JR.: So in
17 the Scott case, the eight justices looked at the
18 videotape without any deference at all to figure
19 out what did the tape show. You're saying we
20 should do the same?

21 MR. BOUTROUS: Yes, Your Honor, and in
22 fact, Justice Breyer, I think in his current --
23 even urged readers of the opinion to look at the
24 video because any person who looked -- who viewed
25 that video would see that the video depicted

1 something vastly different, totally contrary to
2 what had been assumed to be the facts in the
3 lower Court, and that's what we have here. Mr.
4 Zane, his comments -- again, and the tentative
5 just hits the nail on the head. What you saw in
6 that videotape and with the commission report
7 were officials doing what we want them to do.

8 They were conscientiously grappling
9 with the issues and debating the issues, without
10 a hint of racial discrimination, without -- they
11 were trying to do the right thing.

12 HON. JOHN SHEPARD WILEY, JR.: Mr.
13 Boutrous, you were on the trial team in this
14 case, right?

15 MR. BOUTROUS: Yes.

16 HON. JOHN SHEPARD WILEY, JR.: Now, was
17 there any eyewitness testimony from 1992 about
18 how people at the meeting perceived Councilman
19 Dennis Zane's -- Councilmember Dennis Zane's one
20 sentence? There's a disputed sentence that
21 you're familiar with, as is Mr. Shenkman. Was
22 there any eyewitness testimony about what -- how
23 to interpret what Zane said?

24 MR. BOUTROUS: No, Your Honor. There
25 was no eyewitness testimony. It was all -- came

1 down to Dr. Kousser, the expert, giving his
2 interpretation and that -- appears to get no
3 weight. That's -- and again, his interpretation
4 contradicts what everyone can see. If Mr. Zane--

5 HON. JOHN SHEPARD WILEY, JR.: But --

6 MR. BOUTROUS: Yes.

7 HON. JOHN SHEPARD WILEY, JR.: So what
8 should we make of the fact that Pico did not try
9 to introduce testimony from, say, Antonio Vazquez
10 or, say, Richard Fajardo or, say, Doug Willis
11 about what the meaning of the Zane sentence was?
12 What should flow from that failure to produce
13 eyewitness testimony on this -- what the
14 plaintiffs say is the crucial evidence?

15 MR. BOUTROUS: I respectfully expect
16 the Court can infer that they didn't do that
17 because they knew it would verify what the
18 videotape shows and terribly harm their case.
19 That was one of the big frustrations here, Your
20 Honor. We had articles and news articles and as
21 the tentative points out, in 1946, the minority
22 community all supporting the charter.

23 Articles that said race -- the charter
24 will help racial minorities and they managed to
25 twist that through the vehicle of Dr. Kousser

1 opining -- and I think it was like political
2 advocacy -- that that somehow met the opposite of
3 what it actually showed, unanimous support, no
4 opposition. And so it just does not come close
5 to meeting the standards for proving intentional
6 discrimination.

7 And I think it's really important
8 because the Supreme Court, other Courts have said
9 it's divisive when you have litigation accusing
10 government officials of being engaged in racist
11 behavior and so it's a very, very high standard.
12 This does not come close and I think the
13 tentative takes the right approach to evaluating
14 those historical documents, the videotape, the
15 report from the commission, and the Court should
16 reverse the judgment based on the analysis in the
17 tentative.

18 HON. TRICIA BIGELOW: Okay, thank you.
19 You are at 20 minutes, so we'll stop there. I
20 also do just want to make it clear for the record
21 that all of the justices assigned to this case --
22 that being Wiley, Bigelow and Grimes -- viewed
23 the relevant portions of the video of the hearing
24 ourselves. So with that, Mr. Shenkman, you may
25 proceed.

1 MR. SHENKMAN: Thank you, Justice
2 Bigelow, and I'd like to focus particularly on
3 the California Voting Rights Act, if I may.

4 HON. TRICIA BIGELOW: Sure.

5 MR. SHENKMAN: In 2004, respondent
6 Maria Loya ran for a seat on appellant's city
7 council. Only one Latino had ever been elected
8 to the city council in its then 58-year history,
9 and he immediately lost his bid for reelection.
10 Ms. Loya wanted to change that.

11 Agreed that Ms. Loya received the votes
12 of essentially 100 percent Latino voters, far
13 more than any other candidate in that election,
14 but she received much less support from non-
15 Latino voters, about 21 percent. She lost,
16 coming in seventh, in a race for four seats, the
17 epitome of racially polarized voting.

18 When she reviewed the election results
19 of each precinct, something jumped out to her.

20 HON. JOHN SHEPARD WILEY, JR.: Mr.
21 Shenkman, you probably noticed that the tentative
22 does not address racially polarized voting at
23 all.

24 MR. SHENKMAN: Understood, Your Honor,
25 and --

1 HON. JOHN SHEPARD WILEY, JR.: In other
2 words, the tentative assumes that there's
3 racially polarized voting and decides on other
4 grounds. So the argument you're making now is
5 not addressing the tentative.

6 MR. SHENKMAN: Sure. So what I'm
7 getting to here is when she looked at the
8 election results by each precinct, she noticed
9 that Bobby Shriver, who -- a member of the
10 Kennedy family and really the closest thing this
11 country has to royalty, I suppose, beat every
12 candidate in their own neighborhood, except for
13 Ms. Loya.

14 Maria Loya beat Bobby Shriver and every
15 other candidate in the precincts that make up the
16 Latino concentrated Pico neighborhood where she
17 lived and still lives with her husband and two
18 sons. In a seven-district system, corresponding
19 to appellant's seven-member city council, Maria
20 Loya, who both sides agree was the lone Latino-
21 preferred candidate, almost certainly would have
22 won and specifically, she would have won in the
23 seven-district map adopted by the Trial Court.

24 In the at-large system, she lost and
25 Latinos were denied their chosen representative.

1 There can be no doubt that the at-large system in
2 that instance, diluted the Latino vote. If
3 that's not dilution under the California Voting
4 Rights Act, then nothing could be.

5 HON. JOHN SHEPARD WILEY, JR.: You say
6 there cannot be any doubt, but let's assume that
7 voting in Santa Monica is absolutely racially
8 polarized. So 30 percent of Latinos vote for the
9 Latino candidate and everybody else doesn't.
10 That introduces doubt.

11 MR. SHENKMAN: So I think that's
12 actually a key point, and I think that's really
13 where the tentative goes awry, is that initial
14 assumption that there is absolutely no white
15 cross-over voting. At Page 5, the tentative
16 says, "If one assumes groups vote only for
17 candidates from their own group, as is Pico's
18 premise for this suit and the Act's application."
19 Actually, we have never suggested that there is
20 zero white cross-over voting, and in fact, to
21 show racial polarized voting, we don't need to
22 show that there is zero white cross-over vote.

23 We merely need to show that the white
24 cross-over vote is insufficient -- I'm sorry,
25 that the white cross-over vote is insufficient to

1 allow the minority preferred candidate to
2 prevail, usually. And in the case of Maria Loya,
3 getting back to a reality situation in this case
4 --

5 HON. JOHN SHEPARD WILEY, JR.: So Mr. -
6 -

7 MR. SHENKMAN: -- Latino -- I'm sorry.

8 HON. JOHN SHEPARD WILEY, JR.: So Mr.
9 Shenkman, it seems to me that you are willing to
10 embrace racially polarized voting when it helps
11 and to abandon it when it hurts. In other words,
12 your test is perfectly flexible and it boils down
13 to plaintiff always wins. That is to say, we're
14 going to assume that there's race-based voting,
15 but 30 percent is enough to win because, well,
16 there's not all race-based voting. We'll get 21
17 percent from somewhere else. Do you see my
18 problem with that?

19 MR. SHENKMAN: I don't. I think there
20 is a test for racially polarized voting and I
21 think there is a separate test for dilution in
22 any sense that could possibly be consistent with
23 the California Voting Rights Act. What I mean by
24 that is that if, in fact, we start with the
25 assumption that the tentative does at Page 5,

1 that 100 percent of the minority votes for
2 minority candidate; 100 percent of the majority
3 votes for the majority candidate, then
4 absolutely.

5 The only way that a district is going
6 to elect the minority preferred candidate in that
7 instance is if it is a majority/minority
8 district, but that is contrary to the text of the
9 California Voting Rights Act, the legislative
10 history, and the holdings of the Fifth District
11 Court of Appeals and Division 5 of the Second
12 District Court of Appeals. 14028(c) addresses
13 this key difference between the federal Voting
14 Rights Act and the California Voting Rights Act.

15 "The fact that members of protected
16 class are not geographically compact or
17 concentrated, may not preclude a finding of
18 racially polarized voting or a violation of
19 Section 14027 and this section..."

20 HON. JOHN SHEPARD WILEY, JR.: You
21 agree, Mr. Shenkman, in our 21-page tentative
22 opinion, we never talk about those terms, about
23 compactness.

24 MR. SHENKMAN: I'll take your word for
25 it, Justice Wiley. I think, though, that that's

1 a key failing of the tentative and that is that
2 it doesn't address this particular statutory text
3 that says, as the legislative history dictates,
4 what this language says and the Sanchez v.
5 Modesto Court, the Jauregui v. Palmdale Court
6 have said this means, and that is that a
7 majority/minority district is not required.

8 HON. JOHN SHEPARD WILEY, JR.: Well,
9 let me understand what your argument is. I'm a
10 little confused. Do you think that the dilution
11 element exists?

12 MR. SHENKMAN: Yes, although I think
13 that dilution means something different in the
14 context of the California Voting Rights Act than
15 it does in the federal version.

16 HON. JOHN SHEPARD WILEY, JR.: So I
17 take it, you are now abandoning your argument
18 made in one sentence of your brief that the
19 dilution element is satisfied merely by showing
20 racially polarized voting? You're abandoning
21 that argument, right?

22 MR. SHENKMAN: Well, I don't think that
23 we need to rely on that, because the Trial Court
24 in this case --

25 HON. JOHN SHEPARD WILEY, JR.: Yes or

1 no on this, logically.

2 MR. SHENKMAN: For purposes of this
3 argument, I will abandon that. Yes, Justice
4 Wiley.

5 HON. JOHN SHEPARD WILEY, JR.: Well,
6 this is the argument in the case. So you've
7 abandoned that argument. Thank you.

8 HON. TRICIA BIGELOW: And how would you
9 define dilution?

10 MR. SHENKMAN: So dilution, I actually
11 don't think that there's a problem with one of
12 the references in the tentative about adding
13 water to milk, if the election system weakens the
14 minority's voting power. And in fact, as a
15 factual matter, that is what the Trial Court
16 found in this case.

17 HON. TRICIA BIGELOW: How do we --

18 MR. SHENKMAN: And the --

19 HON. TRICIA BIGELOW: -- (sound drops)
20 to dilute it? Does it have to be one that would
21 result in the minority being able to win? That
22 diluted? How much is dilution? Dilution can be,
23 again, one drop of water in a glass of milk or it
24 could be 51 percent of it.

25 MR. SHENKMAN: Sure. Well, I don't

1 know that that is a question that needs to be
2 answered in this case, because in this case, the
3 Trial Court found and is correct that the
4 particular remedy that it did adopt would allow
5 Latinos to elect their preferred candidate in the
6 Pico neighborhood district. And it didn't just
7 say, well, here's 30 percent and end the analysis
8 there.

9 I think that would be inappropriate.
10 What the Superior Court looked at is past
11 elections, like the 2004 election in which Ms.
12 Loya got the most votes in the Pico neighborhood
13 district but lost, and why, and the same thing is
14 true for Tony Vazquez in 1994. He was Latinos'
15 top choice. Received the most votes in the Pico
16 neighborhood but lost citywide.

17 The Superior Court doesn't just end its
18 analysis based on the 30 percent and the election
19 history, either. The Superior Court properly
20 looked to the cost of citywide campaigns for
21 Santa Monica city council, over \$1 million in
22 2012, for example, and the extreme disparity in
23 income and wealth in Santa Monica, both between
24 Latinos and non-Hispanic whites, and also between
25 the Pico neighborhood and other areas of the

1 city. Yes, Justice Wiley.

2 HON. JOHN SHEPARD WILEY, JR.: So Mr.
3 Shenkman, if you've abandoned your argument that
4 dilution is satisfied by racially polarized
5 voting and therefore is not a separate element, I
6 take it that you are now claiming that an
7 influence theory is your main ground of argument
8 and you say 30 percent -- going from 14 to 30
9 percent is enough, right?

10 MR. SHENKMAN: In this particular case,
11 30 percent is sufficient to elect Latino
12 preferred candidates in that Pico neighborhood
13 district. Yes.

14 HON. JOHN SHEPARD WILEY, JR.: Would
15 going from 14 to 15 percent be enough?

16 MR. SHENKMAN: Doubtful.

17 HON. JOHN SHEPARD WILEY, JR.: Why?

18 MR. SHENKMAN: Because that's -- having
19 done these cases quite a bit --

20 HON. JOHN SHEPARD WILEY, JR.: No, no,
21 I --

22 MR. SHENKMAN: -- election --

23 HON. JOHN SHEPARD WILEY, JR.: Sorry.
24 I need a legal rule, not your personal litigation
25 experience.

1 MR. SHENKMAN: Yeah, I think that there
2 is no bright line legal rule.

3 HON. JOHN SHEPARD WILEY, JR.: There --

4 MR. SHENKMAN: I think that --

5 HON. JOHN SHEPARD WILEY, JR.: There
6 must be. There -- you say 14 to 30 is enough but
7 14 to 15 isn't, and yet there's no bright line?
8 That's logically incoherent.

9 MR. SHENKMAN: No, Your Honor. And to
10 be clear, I am not saying that 14 to 15 could
11 never conceivably be enough; although, it's
12 doubtful, because if there is enough to satisfy a
13 significant enough difference between the
14 majority and minority voting behavior to make out
15 a claim for racially polarized voting, then it's
16 extremely unlikely that --

17 HON. JOHN SHEPARD WILEY, JR.: Okay --

18 MR. SHENKMAN: -- 14 to 15 would make a
19 difference.

20 HON. JOHN SHEPARD WILEY, JR.: Mr.
21 Shenkman, you know where I'm going. If 14 to 15
22 might do it, how about 14 to 14.1?

23 MR. SHENKMAN: Again, extremely,
24 extremely unlikely that would ever make a
25 difference. I cannot conceive of a situation

1 where it would.

2 HON. JOHN SHEPARD WILEY, JR.: But Mr.
3 Shenkman, what did the legislature intend, here?

4 MR. SHENKMAN: Sure. So if we --

5 HON. JOHN SHEPARD WILEY, JR.: What --

6 MR. SHENKMAN: I've we don't use exact
7 posture, we can look at the legislative
8 history...

9 HON. JOHN SHEPARD WILEY, JR.: (sound
10 drops). This statute is drawing lines between
11 liability and no liability, and the consequences
12 are enormous. Where does liability begin?
13 You've got to define a line. The statute demands
14 a line. Where's the line?

15 HON. TRICIA BIGELOW: Define the rule
16 you want us (sound drops).

17 MR. SHENKMAN: So I think if, in fact,
18 the Superior Court makes the factual finding that
19 a district election system would make a
20 difference, then that satisfies dilution, and in
21 this case, the district -- the Superior Court
22 found not only that it would make a difference,
23 but looked at past election and showed that it
24 would make a difference. The result would have
25 been different.

1 HON. JOHN SHEPARD WILEY, JR.: If I
2 have understood you correctly, if the District
3 Court finds that a change from 14 percent to 14.1
4 percent is enough, then the Court of Appeal must
5 affirm, correct? That's your rule?

6 MR. SHENKMAN: No. I think that would
7 probably be a ridiculous rule, and --

8 HON. JOHN SHEPARD WILEY, JR.: I guess
9 I agree.

10 MR. SHENKMAN: Okay. So this sort of
11 hypothetical of well, what if there's only one
12 person, that's --

13 HON. JOHN SHEPARD WILEY, JR.: You're
14 breaking new ground here. You've got to propose
15 an administrable, a predictable rule, something
16 that's cogent. What's your proposal?

17 MR. SHENKMAN: I think to set a
18 particular number, because no one -- not in the
19 tentative -- I suppose the tentative is
20 suggesting the number of 50, which would be the
21 same as the federal Voting Rights Act. I heard
22 appellants' counsel say 48. No one has proposed
23 a particular number, and I don't think that it is
24 appropriate to propose a particular number.

25 I actually think that that's a fairly -

1 - that was actually a really cynical view of the
2 judiciary that a judge cannot take all of the
3 facts about whether a switch to a district system
4 or, for that matter, one of the available at-
5 large remedies would make a difference, and the
6 Superior Court in this case went through that
7 proper analysis looking at the percentage
8 difference, looking at the past election history,
9 looking at the cost of citywide campaigns and the
10 disparity in income and wealth between the
11 Latinos and non-Latinos, the Pico neighborhood
12 and the other part of the city.

13 The Court looked at the performance of
14 other similar influence districts in other
15 cities.

16 HON. TRICIA BIGELOW: But just up to --
17 I guess, a follow-up to Justice Wiley's last
18 question and my kind of follow-up to his question
19 was, if you promulgate a rule for what is
20 influence or perhaps what is dilution. You did
21 say if the Superior Court decides it would make a
22 difference and the result would be different, so
23 is that the rule you're saying, the result has to
24 be different and does result different mean
25 winning? And then doesn't it follow along lines

1 with the federal analysis?

2 MR. SHENKMAN: So under federal --
3 under the federal Voting Rights Act, it does not
4 include the language or the ability to influence.
5 It just focuses on the ability to elect, and
6 that's why the Court in Bartlett said that means
7 you've got to show a majority/minority district.
8 The California Voting Rights Act, I think to
9 interpret it to require a majority/minority
10 district would turn it on its head, would ignore
11 14028(c), would ignore 14027, would ignore the
12 legislative history, would be contradictory to
13 the Sanchez v. Modesto and Jauregui v. Palmdale
14 decisions.

15 But if the Court is looking for a
16 particular number, the U.S. Supreme Court,
17 Georgia v. Ashcroft, actually did define what an
18 influence district is in term of numbers, and it
19 said 25 to 50 percent. And that -- 30 percent
20 falls squarely in that range and that's a
21 recognition that the Supreme Court actually
22 recognized in its opinion that those type of
23 influence districts have been effective and may
24 be the best way to promote minority voting power.
25 Justice Wiley, I see your hand's up.

1 HON. JOHN SHEPARD WILEY, JR.: I note
2 in the tentative that Georgia v. Ashcroft is
3 distinguished three different ways. I'm sure you
4 read that. Would you care to attack any of those
5 distinctions?

6 MR. SHENKMAN: So the one that I recall
7 is that the tentative makes the point that
8 Georgia v. Ashcroft was decided as a Section 5
9 case, not a Section 2 case, and Section 5 focuses
10 on retrogression, but to retrogress, you need to
11 be taking away voting power and that is also a
12 recognition that by eliminating an influence
13 district, you are taking away voting power.

14 So I don't see why that would -- that
15 Georgia v. Ashcroft was decided as a Section 5
16 case would have any impact in our analysis under
17 the California Voting Rights Act, that explicitly
18 does not require the potential for a
19 majority/minority district.

20 HON. JOHN SHEPARD WILEY, JR.: But you
21 agree --

22 HON. TRICIA BIGELOW: I -- go ahead,
23 Justice Wiley.

24 HON. JOHN SHEPARD WILEY, JR.: No, no.
25 Certainly, I defer to our presiding justice.

1 HON. TRICIA BIGELOW: I just -- I still
2 feel frustrated that I'm not getting a straight
3 answer on what rule you would promulgate for a
4 definition of dilution or influence, and I
5 guess...

6 MR. SHENKMAN: So I would implore the
7 Court to say that the Court's need to take a fact
8 intensive approach to determining whether there
9 is a remedy that will do any good, because at
10 some point in a case, the Court is going to need
11 to decide on a remedy and the Court should be
12 satisfied that that remedy is going to do
13 something to solve the problem.

14 In this particular case, the Court did
15 that analysis and the Court was satisfied that it
16 would make a difference, and it's not just some
17 pie in the sky, gee, I think it will. It's -- I
18 think the strongest evidence here is that if you
19 look at past elections, it would have made a
20 difference, not just the ability to influence,
21 but the ability to elect, that Maria Loya would
22 have been elected, the Latino preferred
23 candidate, that Tony Vazquez got the most votes
24 there.

25 And so the -- simply looking at the

1 percentage without that searching practical
2 reality of the political situation on the ground,
3 I think it can be misleading. In fact, there are
4 some situations there a 30 percent district will
5 work. There are some where it is unlikely to
6 work. There are places where a much higher
7 percentage than even 50 might be necessary to
8 change the results and allow a minority group to
9 elect the candidate of choice.

10 But all of those factors, those
11 demographic factors, the wealth disparities, the
12 particular politics in that city is what the
13 Courts ought to look at, and it's what this Court
14 did look at to make that determination.

15 And in fact, all of those factual
16 findings are entitled to deference here, as is
17 the Superior Court's reasoned determination based
18 on those factual findings that the votes of
19 Latinos, the largest minority group in Santa
20 Monica, are diluted by the at-large system.

21 The tentative -- I think I've mentioned
22 this a little bit, but the tentative also
23 disregards the availability of non-district
24 remedies, cumulative voting, limited voting, and
25 ranked choice voting. The undisputed evidence at

1 trial showed that these remedies would also give
2 Latinos not just the ability to influence, but
3 the ability to elect representatives of their
4 choice.

5 As Professor Levitt explained at trial,
6 these systems have been effective at electing
7 minority preferred candidates even when the
8 minority proportion of the electorate is less
9 than the threshold of exclusion. Here, the
10 Latino proportion in Santa Monica is greater than
11 the threshold of exclusion for a seven-seat race,
12 meaning that when an entity of Latinos would have
13 the opportunity to elect a candidate of their
14 choice, so in this particular instance, if the
15 Court were looking for a bright line in terms of
16 the effectiveness of these alternative at-large
17 remedies, the bright line that the federal Courts
18 have used, for example, in U.S. v. Village of
19 Port Chester, is the threshold of exclusion.

20 The threshold of exclusion for a seven-
21 seat race is 12.5 percent. The Latino eligible
22 voters in Santa Monica comprised 13.64 percent,
23 greater than the threshold of exclusion, and that
24 would indicate these alternative at-large
25 remedies would also be effective at giving them

1 an opportunity to elect their candidate. Not a
2 guarantee, but a fair opportunity, and that's
3 really all that we're asking for. That's all
4 that we can ask for.

5 And I would close with this. This
6 Court should follow the California legislature's
7 lead, specifically its recognition that a
8 majority/minority district is not necessary for
9 the voting rights of the minority to be diluted,
10 and thus affirm the Superior Court's reasoned
11 judgment that the remedy it selected will be
12 effective.

13 This is certainly no time (sound drops)
14 backwards from what the legislature did in
15 enacting the CVRA. If the court has no further
16 questions, I'll rest. Thank you.

17 HON. TRICIA BIGELOW: Does the panel
18 have any other questions? Okay.

19 HON. JOHN SHEPARD WILEY, JR.: I want
20 to praise Mr. Shenkman. An excellent argument.

21 HON. TRICIA BIGELOW: Okay. We'll go
22 back to -- if there's a reply by Mr. Boutrous.

23 MR. BOUTROUS: Your Honor, this is Mr.
24 Boutrous. I had a power outage here at home so I
25 switched to the phone. You won't be able to see

1 me and I can't see you, but it makes it exciting.
2 So let me just address a few points.

3 Let me start with the alternative at-
4 large systems that Mr. Shenkman points -- the
5 evidence is absolutely not undisputed that those
6 systems would've given Latino voters the ability
7 to -- a greater ability to elect the candidates
8 of their choice than the current system, and in
9 fact, the -- as we point out in our brief, the
10 analysis is completely flawed.

11 And again, it comes down to low
12 numbers: 12.5 percent, the threshold of
13 exclusion, i.e., the minimum population a group
14 would need to guarantee it could elect a
15 candidate, and it is guaranteed, is the word
16 that's used in this context, is 12.5 percent.

17 Their analysis assumes total voter
18 cohesion and total turnout of the Latino
19 population to get to above that, and of course,
20 no voting population, white voters, any --
21 there's no population in the world will have 100
22 percent turnout, and so they just didn't do the
23 analysis and the trial judge didn't do any
24 analysis. Plaintiff Pico does not do any
25 analysis in its brief whatsoever on those issues.

1 Mr. Shenkman was not able to provide
2 any standard for dilution. It's standardless and
3 it would create exactly what the -- Justice
4 Kennedy said in Bartlett, where the Courts would
5 have to ask all these questions and speculate and
6 that's not what the Voting Rights Act is intended
7 to do. It's intended to combat voter -- vote
8 dilution and to ensure equality. It's not meant
9 to embroil or, in this analysis that based on all
10 these racial components and other issues.

11 Justice Wiley was asking about the
12 legislature's intent and Mr. Shenkman didn't
13 really have an answer as to the influence point,
14 but we briefed it and one of the amicus briefs
15 briefed it. The legislative history actually
16 shows that the legislature was specifically
17 concerned or thinking of the situation we teed up
18 and that's mentioned in the tentative, 49 percent
19 in a district as opposed to 50 and that that
20 could qualify if other factors were shown.

21 So our position is completely
22 consistent with the legislature's view and
23 legislative intent. And I would also add that at
24 this point, Mr. Shenkman was -- is conflating
25 racially polarized voting with dilution. He's

1 combining it all together and that's improper.
2 They're two different things.

3 The statute clearly distinguishes
4 between them, and he's put all those eggs in one
5 basket, crossover voting, but the entire premise
6 of Pico's case from the beginning has been that
7 white voters, African American voters, Asian
8 American voters do not cross over enough to help
9 Latino voters elect a candidate of their choice,
10 so it makes no sense, and they are -- sometimes
11 they embrace racially polarized voting, when they
12 think it helps, and then they reject it, so that
13 doesn't fly either.

14 And with respect to the Pico district,
15 the evidence actually from Pico's own expert
16 showed that candidates basically who would win in
17 the Pico district would've won city wide. It
18 really made absolutely no difference. And I
19 would also just add that the -- with respect to
20 Ashcroft, again, Mr. Shenkman had no response to
21 this Court's tentative.

22 The multiple reasons why Ashcroft
23 doesn't apply, and I would just go back to
24 Bartlett there Bartlett, discussing Ashcroft,
25 explains at the end of the plurality opinion from

1 Justice Kennedy, that it's much different to talk
2 about Section 5 cases and what legislatures can
3 and should consider and enhancing voter power,
4 ensuring equality, as opposed to Courts issuing
5 remedies compelling districts and other actions
6 based on racial classifications and the Bartlett
7 Court said that Section 2, and I would say our
8 Voting Rights Act is the same thing, does not --
9 is not intended to maximize voter strength.

10 It's meant to ensure equality. Maybe
11 I'll pause, since I can't tell if you have any
12 questions, but I -- with that, I'll just pause
13 and see if there are any questions.

14 HON. TRICIA BIGELOW: Does the panel
15 have any questions? They are shaking their heads
16 no, they do not. You have five more minutes left
17 if you wish to use it.

18 MR. BOUTROUS: I'll just finish with
19 one point, since Mr. Shenkman did make various
20 claims about how Latino preferred voters fared.
21 They count -- the word gerrymandering, I think,
22 applies best here when we look at how the Pico
23 has always dealt with the data. They count Tony
24 Vazquez, the one time he lost an election. They
25 don't count the three times he won.

1 They don't count Gleam Davis, who's a
2 Latina, because she wasn't Latina surnamed and
3 then because she's not recognized as a Latina.
4 They don't count Latino surnamed candidates who
5 lost with very little Latino support. They deem
6 them not serious, so it's basically a self-
7 fulfilling prophecy and we demonstrated through
8 the data that Latino preferred candidates of all
9 races and all need to be considered,
10 overwhelmingly prevailed.

11 And so I think as Mr. Shenkman raised
12 the data, there's need for the Court to delve
13 into it because of the way the tentative has
14 resolved the issue on dilution, but I just wanted
15 to make that point for the record. Would ask the
16 Court to affirm -- sorry, reverse, based on the
17 rationale in the tentative and greatly appreciate
18 the Court holding the argument today and on this
19 schedule, too. We know we asked for a speedy
20 argument.

21 HON. TRICIA BIGELOW: Okay, thank you
22 both very much. As Justice Wiley said, you both
23 did a great job, so thank you. This is the last
24 matter on calendar today, Division 8's oral
25 argument for this month will be concluded. We

1 are in recess. Thank you.

2 MR. BOUTROUS: Thank you.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.

Date: August 31, 2020

A handwritten signature in cursive script, reading "Sonya M. Ledanski Hyde", is written over a horizontal line.

Sonya Ledanski Hyde

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EXHIBIT B



Los Angeles County Registrar-Recorder/County Clerk

DEAN C. LOGAN
Registrar-Recorder/County Clerk

November 30, 2020

Ms. Denise Anderson-Warren, City Clerk
City of Santa Monica
1685 Main Street, Room 102
Santa Monica, California 90401

Dear Ms. Anderson-Warren:

Enclosed are the Official Canvass Certificate and the Official Statement of Votes Cast by precinct for the City of Santa Monica General Municipal, Unified School District, and Community College District Elections consolidated with the General Election held on November 3, 2020.

Please call the Election Planning Section at (562) 462-2317, if you have any questions.

Sincerely,

DEAN C. LOGAN
Registrar-Recorder/County Clerk

LATICIA MCCORKLE, Assistant Division Manager
Election Information and Preparation Division

Enclosures
Official Canvass Certificate
Official Statement of Votes Cast

Document received by the CA Supreme Court.

Los Angeles County Registrar-Recorder/County Clerk

Certificate of the Canvass of the Election Returns

I, DEAN C. LOGAN, Registrar-Recorder/County Clerk of the County of Los Angeles, of the State of California, DO HEREBY CERTIFY that pursuant to the provisions of Section 15300 et seq. of the California Elections Code, I did canvass the returns of the votes cast for each elective office and/or measure(s) for

Santa Monica City

at the General Election, held on the 3rd day of November, 2020.

I FURTHER CERTIFY that the Statement of Votes Cast, to which this certificate is attached, shows the total number of ballots cast in said jurisdiction, and that the whole number of votes cast for each candidate and/or measure(s) in said jurisdiction in each of the respective precincts therein, and the totals of the respective columns and the totals as shown for each candidate and/or measure(s) are full, true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 30th day of November, 2020.



Dean C. Logan

DEAN C. LOGAN
Registrar-Recorder/County Clerk
County of Los Angeles

Document received by the C.A. Supreme Court.

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT			SANTA MONICA CITY GEN MUNI COUNCILMEMBER											
LOCATION	REGIST- RATION	BALLOTS CAST	PHIL BROCK	ANDREW BROWNING	MERVIENDO ANDRIKA	DOMINIC GOMEZ	CHRISTINE PARRA	TERRY O'DAY	MARCUS OWENS	ANNE-MARIE SLACK	JON MANN	CHIP MARTIN	TODD MENTCH	ZOE MONTANER
SANTA MONICA - 6250002A		350	175	29	18	12	117	68	24	4	5	23	5	11
VOTE BY MAIL	SERIAL 1223	1997	924	127	67	26	625	611	104	47	70	183	30	66
TOTAL		2742	1099	156	85	38	742	679	128	51	75	206	35	77
SANTA MONICA - 6250012A		280	115	16	17	12	91	39	22	16	18	24	6	11
VOTE BY MAIL	SERIAL 1224	1297	413	85	71	33	401	402	135	38	53	86	24	62
TOTAL		2078	1577	101	88	45	492	441	157	54	71	110	30	73
SANTA MONICA - 6250017A		288	162	28	16	10	130	41	13	4	14	30	6	10
VOTE BY MAIL	SERIAL 1225	1909	911	132	52	32	714	519	104	39	72	156	37	55
TOTAL		2526	2197	160	68	42	844	560	117	43	86	186	43	65
SANTA MONICA - 6250020A		340	117	41	26	20	98	59	14	10	24	45	6	14
VOTE BY MAIL	SERIAL 1226	1527	471	89	72	25	474	443	126	48	53	97	16	73
TOTAL		2409	1867	130	98	45	572	502	140	58	77	142	22	87
SANTA MONICA - 6250023B		283	103	34	25	11	74	52	27	14	12	18	13	9
VOTE BY MAIL	SERIAL 1227	1545	429	119	79	51	485	467	203	51	47	97	36	70
TOTAL		2409	1828	153	104	62	559	519	230	65	59	115	49	79
SANTA MONICA - 6250025D		268	85	35	25	21	74	54	36	13	16	22	8	19
VOTE BY MAIL	SERIAL 1228	976	270	51	56	41	299	258	133	35	27	51	21	49
TOTAL		1910	1244	355	81	62	373	312	169	48	43	73	29	68
SANTA MONICA - 6250029A		297	154	30	13	6	113	46	15	8	18	36	4	12
VOTE BY MAIL	SERIAL 1229	1817	821	106	64	26	709	459	120	29	72	114	26	69
TOTAL		2515	2114	975	77	32	822	505	135	37	90	150	30	81
SANTA MONICA - 6250032A		302	142	23	20	13	124	51	28	17	23	25	6	7
VOTE BY MAIL	SERIAL 1230	1779	669	86	77	28	617	536	173	48	68	98	31	62
TOTAL		2540	2081	811	97	41	741	587	201	65	91	123	37	69
SANTA MONICA - 6250034A		295	92	24	31	13	89	63	20	12	8	14	3	18
VOTE BY MAIL	SERIAL 1231	1520	425	99	71	28	437	454	176	55	63	76	29	69
TOTAL		2351	1815	517	102	41	526	517	196	67	71	90	32	87
SANTA MONICA - 6250036B		262	94	19	15	14	77	54	18	13	9	18	2	9
VOTE BY MAIL	SERIAL 1232	1440	474	110	68	29	450	435	130	44	44	97	24	78
TOTAL		2135	1702	568	83	43	527	489	148	57	53	115	26	87
SANTA MONICA - 6250038A		349	89	41	26	17	63	43	27	17	14	36	10	14
VOTE BY MAIL	SERIAL 1233	1220	330	93	73	46	316	323	131	50	60	96	33	56
TOTAL		2152	1569	419	99	63	379	366	158	67	74	132	43	70
SANTA MONICA - 6250041A		310	97	28	21	11	88	56	31	12	12	18	10	19
VOTE BY MAIL	SERIAL 1234	1499	434	107	88	39	453	442	186	38	56	73	46	86
TOTAL		2377	1809	531	109	50	541	498	217	50	68	91	56	105
SANTA MONICA - 6250046A		256	83	26	17	16	67	49	30	12	16	11	4	8
VOTE BY MAIL	SERIAL 1235	1650	455	97	72	33	470	555	182	49	57	66	33	78
TOTAL		2400	1906	538	89	49	537	604	212	61	73	77	37	86
SANTA MONICA - 6250052A		333	113	30	25	18	104	70	29	14	13	28	7	19
VOTE BY MAIL	SERIAL 1236	1368	369	113	64	45	406	418	141	41	70	85	26	75
TOTAL		2261	1701	482	89	63	510	488	170	55	83	113	33	94

SANTA MONICA CITY GEN MUNI
COUNCILMEMBERFINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCT

PHIL BROCK

ANDREW
BROWNINGMERVIENDO
ANDIKADOMINIC
GOMEZCHRISTINE
PARRA

TERRY O'DAY

MARCUS
OWENSANNE-MARIE
SLACK

JON MANN

CHIP MARTIN

TODD MENTCH

ZOE MUNTANER

LOCATION

REGIST-
RATIONBALLOTS
CAST

SANTA MONICA - 6250060A		272	76	21	24	23	90	46	35	9	8	16	4	9
VOTE BY MAIL	SERIAL 1237	1296	375	62	68	47	505	326	156	39	44	45	30	75
TOTAL		2029	1568	451	83	92	70	595	372	191	48	52	61	84
SANTA MONICA - 6250061B		273	92	22	21	20	90	60	36	5	10	11	1	7
VOTE BY MAIL	SERIAL 1238	1108	323	39	51	50	373	324	161	25	41	38	18	51
TOTAL		1907	1381	415	61	72	70	463	384	197	30	51	49	58
SANTA MONICA - 6250067A		342	130	22	21	18	126	72	27	6	14	14	3	10
VOTE BY MAIL	SERIAL 1239	1295	435	70	46	27	407	403	128	34	45	55	20	57
TOTAL		2100	1637	565	92	67	45	533	475	155	40	59	69	67
SANTA MONICA - 6250069A		413	167	20	18	12	159	100	31	13	10	12	7	12
VOTE BY MAIL	SERIAL 1240	1692	598	83	79	46	585	555	170	50	48	65	35	62
TOTAL		2609	2105	765	103	97	58	744	655	201	63	58	77	74
SANTA MONICA - 6250071A		298	97	21	18	26	88	73	32	9	11	12	8	10
VOTE BY MAIL	SERIAL 1241	1433	319	53	69	51	452	484	197	47	37	46	13	60
TOTAL		2239	1731	416	74	87	77	540	557	229	56	48	58	70
SANTA MONICA - 6250072A		346	102	21	14	18	126	92	36	13	19	13	4	13
VOTE BY MAIL	SERIAL 1242	1756	603	108	82	48	554	575	184	45	59	76	23	78
TOTAL		2501	2102	705	129	96	66	680	667	220	58	78	89	91
SANTA MONICA - 6250078A		318	115	30	19	12	106	85	32	16	19	13	5	14
VOTE BY MAIL	SERIAL 1243	1462	495	80	51	29	449	470	128	44	60	49	14	64
TOTAL		2175	1780	610	110	70	41	555	555	160	60	79	62	78
SANTA MONICA - 6250083B		315	120	28	23	10	114	86	26	9	12	22	6	15
VOTE BY MAIL	SERIAL 1244	1759	612	75	64	50	615	570	158	52	44	70	30	70
TOTAL		2521	2074	732	103	87	60	729	656	184	61	56	92	85
SANTA MONICA - 6250087A		288	140	24	14	9	125	63	27	17	11	15	4	7
VOTE BY MAIL	SERIAL 1245	1648	610	102	48	33	552	553	121	68	55	87	20	72
TOTAL		2344	1936	750	126	62	42	677	616	148	85	66	102	79
SANTA MONICA - 6250093A		351	110	24	16	18	95	87	30	11	10	27	11	14
VOTE BY MAIL	SERIAL 1246	1586	439	76	77	30	421	521	122	53	62	111	35	85
TOTAL		2410	1937	549	100	93	48	516	608	152	64	72	138	99
SANTA MONICA - 6250094A		346	122	28	22	22	91	67	32	7	17	30	5	17
VOTE BY MAIL	SERIAL 1247	1533	547	108	54	34	466	437	125	43	56	98	19	70
TOTAL		2339	1879	669	136	76	56	557	504	157	50	73	128	87
SANTA MONICA - 6250098A		268	84	20	18	10	71	52	26	13	9	27	4	11
VOTE BY MAIL	SERIAL 1248	1514	437	69	46	37	446	482	152	49	58	83	31	59
TOTAL		2284	1782	521	89	64	47	517	534	178	62	67	110	70
SANTA MONICA - 6250109A		215	84	15	14	11	70	39	20	5	8	20	2	10
VOTE BY MAIL	SERIAL 1249	1655	554	92	59	38	521	566	162	53	51	81	35	66
TOTAL		2264	1870	638	107	73	49	591	605	182	58	59	101	76
SANTA MONICA - 6250113B		309	126	31	21	14	91	45	28	6	15	26	7	15
VOTE BY MAIL	SERIAL 1250	1355	417	108	70	39	381	401	139	39	55	90	21	61
TOTAL		2153	1664	543	139	91	53	472	446	167	45	70	116	76

SANTA MONICA CITY GEN MUNI
COUNCILMEMBERFINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCT

PHIL BROCK

ANDREW
BROWNINGMERVIENDO
ANDIKADOMINIC
GOMEZCHRISTINE
PARRA

TERRY O'DAY

MARCUS
OWENSANNE-MARIE
SLACK

JON MANN

CHIP MARTIN

TODD MENTCH

ZOE MUNTANER

LOCATION

REGIST-
RATIONBALLOTS
CAST

PRECINCT TOTAL

VBM TOTAL

GRAND TOTAL

71970

9628

47308

56936

3591

15728

19319

836

2833

3669

625

2024

2649

470

1138

1608

3076

14955

18031

1912

14452

16364

850

4607

5457

351

1428

1779

408

1666

2074

684

2649

3333

192

837

1029

405

2081

2486

FINAL OFFICIAL STATEMENT OF VOTES CAST BY PRECINCT			SANTA MONICA CITY GEN MUNI COUNCILMEMBER													
LOCATION	REGIST- RATION	BALLOTS CAST	GLEAM OLIVIA DAVIS	OSCAR DE LA TORRE	M FONDA- BONARDI	TOM CISZEK	ANDREW KAMM	TED WINTERER	ANA MARIA JARA	JOHN P JEWELL	N J JONES JR					
SANTA MONICA - 6250002A		350	64	109	105	16	8	62	44	7	3					
VOTE BY MAIL	SERIAL 1223	1997	629	639	538	135	62	561	427	15	16					
TOTAL		2742	693	748	643	151	70	623	471	22	19					
SANTA MONICA - 6250012A		280	43	85	68	10	22	41	43	10	7					
VOTE BY MAIL	SERIAL 1224	1297	449	367	251	108	74	401	350	16	20					
TOTAL		2078	492	452	319	118	96	442	393	26	27					
SANTA MONICA - 6250017A		288	39	101	106	19	18	42	32	3	1					
VOTE BY MAIL	SERIAL 1225	1909	513	620	631	121	76	501	351	17	34					
TOTAL		2526	552	721	737	140	94	543	383	20	35					
SANTA MONICA - 6250020A		340	65	81	85	27	7	52	54	9	11					
VOTE BY MAIL	SERIAL 1226	1527	540	445	320	134	68	462	383	13	33					
TOTAL		2409	605	526	405	161	75	514	437	22	44					
SANTA MONICA - 6250023B		283	44	87	55	19	16	44	40	9	7					
VOTE BY MAIL	SERIAL 1227	1545	579	456	298	130	58	486	441	21	34					
TOTAL		2409	623	543	353	149	74	530	481	30	41					
SANTA MONICA - 6250025D		268	51	67	27	16	14	42	41	2	3					
VOTE BY MAIL	SERIAL 1228	976	300	370	150	89	44	230	286	23	44					
TOTAL		1910	351	437	177	105	58	272	327	25	47					
SANTA MONICA - 6250029A		297	56	91	92	18	18	43	34	15	6					
VOTE BY MAIL	SERIAL 1229	1817	515	679	600	108	72	471	391	20	24					
TOTAL		2515	571	770	692	126	90	514	425	35	30					
SANTA MONICA - 6250032A		302	42	101	82	32	13	46	40	11	5					
VOTE BY MAIL	SERIAL 1230	1779	627	568	439	143	52	525	483	14	26					
TOTAL		2540	669	669	521	175	65	571	523	25	31					
SANTA MONICA - 6250034A		295	67	86	60	14	11	56	61	12	5					
VOTE BY MAIL	SERIAL 1231	1520	560	426	294	125	61	465	453	14	35					
TOTAL		2351	627	512	354	139	72	521	514	26	40					
SANTA MONICA - 6250036B		262	59	68	56	15	10	57	50	6	4					
VOTE BY MAIL	SERIAL 1232	1440	466	426	310	141	69	414	392	18	32					
TOTAL		2135	525	494	366	156	79	471	442	24	36					
SANTA MONICA - 6250038A		349	46	45	48	27	21	40	36	15	9					
VOTE BY MAIL	SERIAL 1233	1220	359	308	218	126	58	285	293	24	33					
TOTAL		2152	405	353	266	153	79	325	329	39	42					
SANTA MONICA - 6250041A		310	61	81	59	16	12	51	54	7	6					
VOTE BY MAIL	SERIAL 1234	1499	507	418	263	119	62	409	448	32	44					
TOTAL		2377	568	499	322	135	74	460	502	39	50					
SANTA MONICA - 6250046A		256	45	57	40	15	10	40	58	9	10					
VOTE BY MAIL	SERIAL 1235	1650	655	504	283	116	67	537	536	15	34					
TOTAL		2400	700	561	323	131	77	577	594	24	44					
SANTA MONICA - 6250052A		333	72	92	64	9	20	69	66	7	10					
VOTE BY MAIL	SERIAL 1236	1368	467	430	240	114	73	392	415	24	40					
TOTAL		2261	539	522	304	123	93	461	481	31	50					

SANTA MONICA CITY GEN MUNI
COUNCILMEMBERFINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCTGLEAM OLIVIA
DAVISOSCAR DE LA
TORREM FONDA-
BONARDI

TOM CISZEK

ANDREW KAMM

TED WINTERER

ANA MARIA
JARA

JOHN P JEWELL

N I JONES JR

LOCATION	REGIST- RATION	BALLOTS CAST	GLEAM OLIVIA DAVIS	OSCAR DE LA TORRE	M FONDA- BONARDI	TOM CISZEK	ANDREW KAMM	TED WINTERER	ANA MARIA JARA	JOHN P JEWELL	N I JONES JR			
SANTA MONICA - 6250060A		272	49	72	44	15	16	39	45	6	15			
VOTE BY MAIL	SERIAL 1237	1296	400	441	249	95	70	310	361	13	32			
TOTAL	2029	1568	449	513	293	110	86	349	406	19	47			
SANTA MONICA - 6250061B		273	51	114	44	11	8	38	67	3	3			
VOTE BY MAIL	SERIAL 1238	1108	358	493	164	53	58	258	410	15	44			
TOTAL	1907	1381	409	607	208	64	66	296	477	18	47			
SANTA MONICA - 6250067A		342	72	115	78	29	14	76	82	6	15			
VOTE BY MAIL	SERIAL 1239	1295	457	394	311	114	45	415	388	13	24			
TOTAL	2100	1637	529	509	389	143	59	491	470	19	39			
SANTA MONICA - 6250069A		413	108	127	109	23	12	103	94	10	5			
VOTE BY MAIL	SERIAL 1240	1692	614	569	418	143	66	544	527	9	28			
TOTAL	2609	2105	722	696	527	166	78	647	621	19	33			
SANTA MONICA - 6250071A		298	59	113	54	19	12	59	76	1	8			
VOTE BY MAIL	SERIAL 1241	1433	541	539	211	66	69	458	541	16	56			
TOTAL	2239	1731	600	652	265	85	81	517	617	17	64			
SANTA MONICA - 6250072A		346	105	117	84	23	11	86	94	8	12			
VOTE BY MAIL	SERIAL 1242	1756	610	604	355	140	77	549	550	20	46			
TOTAL	2501	2102	715	721	439	163	88	635	644	28	58			
SANTA MONICA - 6250078A		318	85	102	70	17	13	87	88	2	4			
VOTE BY MAIL	SERIAL 1243	1462	499	501	354	97	53	431	443	19	24			
TOTAL	2175	1780	584	603	424	114	66	518	531	21	28			
SANTA MONICA - 6250083B		315	89	95	79	21	14	94	71	8	2			
VOTE BY MAIL	SERIAL 1244	1759	632	615	429	93	58	590	573	17	24			
TOTAL	2521	2074	721	710	508	114	72	684	644	25	26			
SANTA MONICA - 6250087A		288	60	107	104	17	13	62	52	6	8			
VOTE BY MAIL	SERIAL 1245	1648	579	580	399	80	69	575	496	27	29			
TOTAL	2344	1936	639	687	503	97	82	637	548	33	37			
SANTA MONICA - 6250093A		351	70	76	74	31	12	89	66	8	6			
VOTE BY MAIL	SERIAL 1246	1586	607	389	266	139	73	546	492	24	29			
TOTAL	2410	1937	677	465	340	170	85	635	558	32	35			
SANTA MONICA - 6250094A		346	56	78	56	18	13	56	52	16	11			
VOTE BY MAIL	SERIAL 1247	1533	528	424	327	137	83	464	409	20	32			
TOTAL	2339	1879	584	502	383	155	96	520	461	36	43			
SANTA MONICA - 6250098A		268	55	60	52	20	14	68	55	10	5			
VOTE BY MAIL	SERIAL 1248	1514	525	377	340	152	71	502	439	15	31			
TOTAL	2284	1782	580	437	392	172	85	570	494	25	36			
SANTA MONICA - 6250109A		215	40	63	46	11	11	42	39	3	8			
VOTE BY MAIL	SERIAL 1249	1655	589	497	385	132	80	521	468	15	20			
TOTAL	2264	1870	629	560	431	143	91	563	507	18	28			
SANTA MONICA - 6250113B		309	50	88	81	26	12	43	47	5	4			
VOTE BY MAIL	SERIAL 1250	1355	439	377	258	146	64	380	353	23	31			
TOTAL	2153	1664	489	465	339	172	76	423	400	28	35			

[illegible]

SANTA MONICA CITY GEN MUNI
COUNCILMEMBERGLEAM OLIVIA
DAVISOSCAR DE LA
TORREM FONDA
BONARDI

TOM CISZEK

ANDREW KAMM

TED WINTERER

ANA MARIA
JARA

JOHN P JEWELL

N I JONES JR

FINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCT

LOCATION

REGIST-
RATIONBALLOTS
CAST

PRECINCT TOTAL

VBM TOTAL

GRAND TOTAL

71970

9628

47308

56936

1933

16220

18153

2788

14782

17570

2166

10291

12457

602

3680

4282

414

2051

2465

1841

14164

16005

1762

13425

15187

231

564

795

211

1016

1227

FINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCTSANTA MONICA CITY GEN MUNI
CNC TERM ENDS 11/22KRISTIN
MCCOWAN

LOCATION	REGIST- RATION	BALLOTS CAST																	
SANTA MONICA - 6250002A		350	179																
VOTE BY MAIL	SERIAL 1223	1997	1003																
TOTAL		2742	2347	1182															
SANTA MONICA - 6250012A		280	140																
VOTE BY MAIL	SERIAL 1224	1297	760																
TOTAL		2078	1577	900															
SANTA MONICA - 6250017A		288	140																
VOTE BY MAIL	SERIAL 1225	1909	923																
TOTAL		2526	2197	1063															
SANTA MONICA - 6250020A		340	200																
VOTE BY MAIL	SERIAL 1226	1527	795																
TOTAL		2409	1867	995															
SANTA MONICA - 6250023B		283	183																
VOTE BY MAIL	SERIAL 1227	1545	930																
TOTAL		2409	1828	1113															
SANTA MONICA - 6250025D		268	175																
VOTE BY MAIL	SERIAL 1228	976	559																
TOTAL		1910	1244	734															
SANTA MONICA - 6250029A		297	147																
VOTE BY MAIL	SERIAL 1229	1817	918																
TOTAL		2515	2114	1065															
SANTA MONICA - 6250032A		302	170																
VOTE BY MAIL	SERIAL 1230	1779	1024																
TOTAL		2540	2081	1194															
SANTA MONICA - 6250034A		295	175																
VOTE BY MAIL	SERIAL 1231	1520	883																
TOTAL		2351	1815	1058															
SANTA MONICA - 6250036B		262	145																
VOTE BY MAIL	SERIAL 1232	1440	813																
TOTAL		2135	1702	958															
SANTA MONICA - 6250038A		349	181																
VOTE BY MAIL	SERIAL 1233	1220	625																
TOTAL		2152	1569	806															
SANTA MONICA - 6250041A		310	181																
VOTE BY MAIL	SERIAL 1234	1499	852																
TOTAL		2377	1809	1033															
SANTA MONICA - 6250046A		256	146																
VOTE BY MAIL	SERIAL 1235	1650	1031																
TOTAL		2400	1906	1177															
SANTA MONICA - 6250052A		333	195																
VOTE BY MAIL	SERIAL 1236	1368	800																
TOTAL		2261	1701	995															

FINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCTSANTA MONICA CITY GEN MUNI
CNC TERM ENDS 11/22KRISTIN
MCCOWAN

LOCATION	REGIST- RATION	BALLOTS CAST																	
SANTA MONICA - 6250060A		272	173																
VOTE BY MAIL SERIAL 1237		1296	751																
TOTAL	2029	1568	924																
SANTA MONICA - 6250061B		273	183																
VOTE BY MAIL SERIAL 1238		1108	681																
TOTAL	1907	1381	864																
SANTA MONICA - 6250067A		342	215																
VOTE BY MAIL SERIAL 1239		1295	743																
TOTAL	2100	1637	958																
SANTA MONICA - 6250069A		413	244																
VOTE BY MAIL SERIAL 1240		1692	1033																
TOTAL	2609	2105	1277																
SANTA MONICA - 6250071A		298	202																
VOTE BY MAIL SERIAL 1241		1433	890																
TOTAL	2239	1731	1092																
SANTA MONICA - 6250072A		346	225																
VOTE BY MAIL SERIAL 1242		1756	1062																
TOTAL	2501	2102	1287																
SANTA MONICA - 6250078A		318	207																
VOTE BY MAIL SERIAL 1243		1462	773																
TOTAL	2175	1780	980																
SANTA MONICA - 6250083B		315	198																
VOTE BY MAIL SERIAL 1244		1759	1047																
TOTAL	2521	2074	1245																
SANTA MONICA - 6250087A		288	180																
VOTE BY MAIL SERIAL 1245		1648	982																
TOTAL	2344	1936	1162																
SANTA MONICA - 6250093A		351	186																
VOTE BY MAIL SERIAL 1246		1586	875																
TOTAL	2410	1937	1061																
SANTA MONICA - 6250094A		346	196																
VOTE BY MAIL SERIAL 1247		1533	822																
TOTAL	2339	1879	1018																
SANTA MONICA - 6250098A		268	165																
VOTE BY MAIL SERIAL 1248		1514	874																
TOTAL	2284	1782	1039																
SANTA MONICA - 6250109A		215	129																
VOTE BY MAIL SERIAL 1249		1655	944																
TOTAL	2264	1870	1073																
SANTA MONICA - 6250113B		309	154																
VOTE BY MAIL SERIAL 1250		1355	752																
TOTAL	2153	1664	906																

EXHIBIT C



MENU

Phil Brock



Occupation: Businessman

1328 12th Street

Santa Monica, CA 90401

Phone (310) 393-8004

brock4santamonica@gmail.com

<https://www.brockthevote.org>

[Español \(Spanish\)](#)

Candidate Statement

Native Santa Monica!

- SMMUSD: Madison, Lincoln, Samohi, SMC, UCLA, LMU
- Played in our parks, body-surfed our waves, taught in our schools, community activist
- Renter, Homeowner, Teacher, Entrepreneur

Santa Monica Commissioner since 2003

- Past President, CalParksBoard
- 2013 Commissioner of the Year, Chair, Recreation & Parks Commission

Working for Residents

- Host, Brock on Your Block; Columnist, SM Mirror
- Co-Chair, Historic San Vicente Coalition
- SMart Group
- Samohi Alumni President
- Kiwanis Lieutenant-Governor

- SM Elks Trustee/**Citizen of the Year**
- Salvation Army Advisory Board/Volunteer of the Year
- Civic Auditorium Working Group
- Boys & Girls Club Council

I Will Fight for You! Residents First!

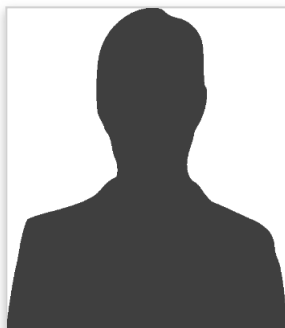
- Restore Public Safety/Reduce Crime **NOW!**
- **Common Sense City Government!**
- **STOP** Overdevelopment! **STOP** wasting our tax dollars! **STOP** overtaxing!
- **STOP** Traffic gridlock! **ENFORCE** e-scooter laws!
- **ENACT** building height/density limits. **Palm trees must be our only high rises!**
- Intelligent change that preserves character! Sustainably adapt buildings!
- Value YOUTH and SENIORS!
- Champion RENT CONTROL/Affordable FAMILY housing
- Find **REAL** homelessness solutions!
- Transparent government/LISTEN to residents
- **Racial Justice Now!**
- Free public transportation for residents! Free citywide high-speed internet!
- Parks are paramount. Create **SAFE** open space!
- Envision the future by honoring our past!

I will take action where incumbents have failed! Restore the Soul of Our City!

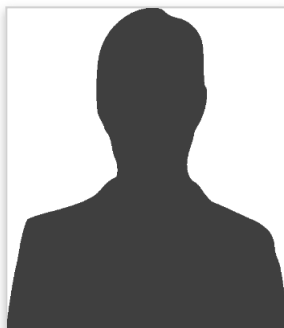
Other Candidates: City Council 4-Yr



Andrew Browning



Merv Andika



Dominic Gomez



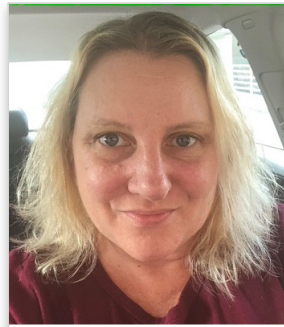
Christine Parra



Terry O'Day



Marcus Owens



Anne-Marie Slack



Jon Mann



Chip Martin



Todd Mentch



Zoë Muntaner



Glean Olivia Davis



Oscar De La Torre



Mario Fonda-Bonardi



Tom Cizek



Andrew Kamm



Ted Winterer



Ana Maria Jara



John Patrick Jewell III



Nathaniel Jones

Election Calendar

[Complete Election Calendar](#)**2020 Election Resources**[Taxpayer Protection/Oaks Initiative Log \(Excel\)](#)[Top 5 FAQs on November 2020 Election](#)[Presentation on Voting Options for November 2020 Election](#)[Regulations Relating to Election Campaigns](#)[Election Links](#)[Select Language](#) | ▼

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MENU

Gleam Olivia Davis



Occupation: Santa Monica Councilmember

1158 26th Street, #139

Santa Monica, CA 90403

Phone (213) 324-0666

gleam.davis@gmail.com

<https://www.gleamdavis2020.com>

Español (Spanish)

Candidate Statement

As your Councilmember, I have worked to preserve and create affordable housing, and to provide a safe and stable community for all residents.

If re-elected, I will focus on:

- Promoting a just Santa Monica that offers equitable opportunity for all residents;
- Addressing the public health and economic effects of the COVID-19 pandemic;
- Reimagining public safety organizations to make them more just and more effective;
- Restoring our local economy so that it provides good jobs and good wages;
- Fighting for a safer and sustainable transportation system that includes innovative solutions to traffic and parking and that is pedestrian and bike friendly;
- Expanding educational opportunities for everyone;
- Increasing public open space and recreational facilities including the conversion of Santa

Monica Airport to a great park;

- Working for the wellbeing of seniors and youth;
- Reducing the number of people experiencing homelessness; and
- Helping all residents reach their full potential.

I am endorsed by:

- U.S. Representative Ted Lieu
- Los Angeles County Supervisor Sheila J. Kuehl
- State Senator Ben Allen
- Assemblymember Richard Bloom
- Former Santa Monica Mayors Nat Trives, Michael Feinstein, and Judy Abdo

I am pleased to have such a broad base of support and would be honored to have your vote on November 3.

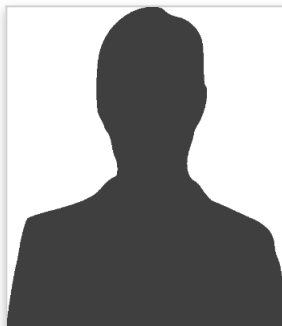
Other Candidates: City Council 4-Yr



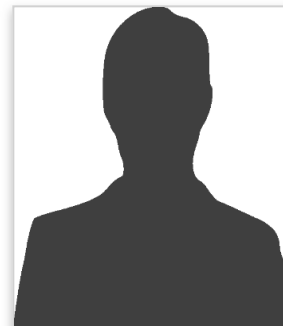
Phil Brock



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Andrew Kamm



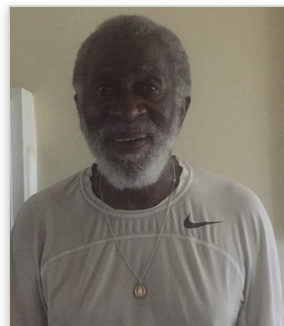
Ted Winterer



Ana Maria Jara



John Patrick Jewell III



Nathaniel Jones

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City of Santa Monica

[MENU](#)

Oscar De La Torre



2039 1/2 Stewart St.
Santa Monica, CA 90404
Phone (310) 922-5122
odelatorre16@yahoo.com
<http://www.vote4oscar.com>

[Español \(Spanish\)](#)

Candidate Statement

The City of Santa Monica needs a champion on City Council who cares about local businesses, homeowners and renters alike.

As a lifelong resident of Santa Monica, I am running for City Council **to restore public trust in our government by restoring public safety to our streets!**

I have devoted my career to public service. I have a **MA in PUBLIC ADMINISTRATION** and am the **FOUNDER** of a youth center, **CHAIR** of Santa Monica's Pico Neighborhood Association, and **18-year MEMBER OF THE BOARD OF EDUCATION** for the Santa Monica-Malibu Unified School District.

As the father of two children, I have a personal commitment to advancing public safety and the well-being of **ALL Santa Monicans**.

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I am a **PROVEN LEADER** who will:

-**ENFORCE OUR LAWS** with “Compassionate Accountability” to protect our public spaces while supporting those in need,

-**STOP IRRESPONSIBLE DEVELOPMENT** and gentrification and protect renters and small businesses from displacement,

-**CHALLENGE** the culture of **corruption at City Hall** that promotes profit over people,

-**ENSURE** that resident needs and concerns are given priority over tourists,

-**DEFEND** workers from lay-offs caused by fiscal mismanagement,

-**FIGHT** for social, economic, environmental & racial justice.

Santa Monica needs a champion for residents to hold our government accountable. **Elect OSCAR DE LA TORRE** to bring needed **CHANGE** to Santa Monica.

WWW.VOTE4OSCAR.COM

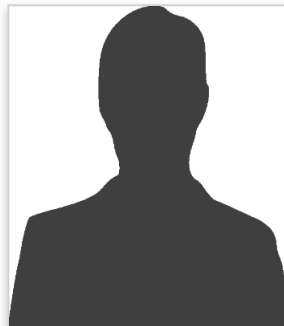
Other Candidates: City Council 4-Yr



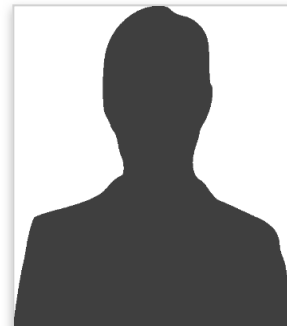
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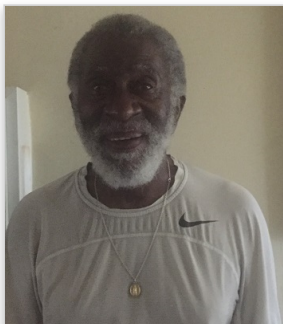
Ted Winterer



Ana Maria Jara



John Patrick Jewell III



Nathaniel Jones

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[MENU](#)

Christine Parra



Occupation: Emergency Management

Phone (310) 678-7442

info@christineparra.com

<https://www.christineparra.com>

[Español \(Spanish\)](#)

Candidate Statement

It's time for **CHANGE** in Santa Monica.

Living in the Gandara Park neighborhood within the Pico District for the last 20 years, I've experienced firsthand the inequities that have fallen upon forgotten pockets of our city.

We need fresh perspectives and **effective** solutions to current issues facing our Santa Monica family. I'm committed to building a safe and healthy community where all our residents will thrive.

Through my education and as a career public servant working in fire safety and emergency preparedness, I am familiar with the complexities of city planning and know how to balance a budget. City development and revitalization are necessary but should never come at the expense of our tax-paying residents. As a mother of three and an engaged community member, I know what it takes to help create a livable city.

As your representative, I come with an open heart and willingness to listen and learn, while recognizing my own biases. I am dedicated to protecting residents' quality of life and ensuring

that decisions are equitable and fair for all. I vow, as your councilwoman, to uphold the highest standards of integrity, character and ethics. Let's all love Santa Monica again!!
www.christineparra.com

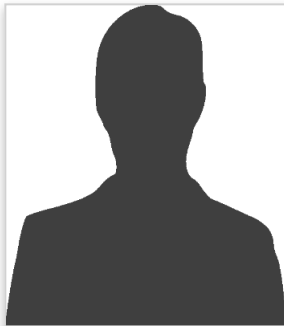
Other Candidates: City Council 4-Yr



Phil Brock



Andrew Browning



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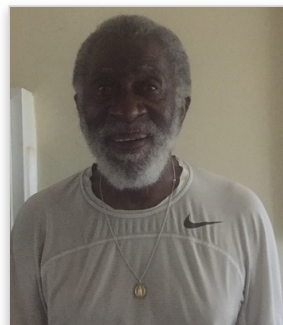
Ted Winterer



Ana Maria Jara



John Patrick Jewell III



Nathaniel Jones

Election Calendar

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MENU

Kristin McCowan



Occupation: Executive Director

1158 26th Street, #294

Santa Monica, CA 90404

Phone (424) 341-4083

info@kristinmccowan.com

<https://www.kristinmccowan.com>

Español (Spanish)

Candidate Statement

I'm a second-generation Santa Monican. My family's been part of our City's history since 1938. I've lived through less inclusive years and rejoiced as we became a progressive model for the nation.

This past year has shaken our hope. It is clear we still have a lot of work to do.

Now, as we ask ourselves tough questions, listen and learn, I'll help guide our City to become more genuinely equitable, inclusive and forward-thinking. My professional experience and lived historical context give me the unique ability to achieve these goals. I worked for FEMA, the Obama Administration, and Mayor Garcetti. I served as a Pier Commissioner and volunteered in the St. Monica community. As a Black parent of young children, I know the challenges facing Santa Monica families.

Critical days lie ahead as we fight COVID-19 and address the outcry for systemic change. My priorities on City Council are: economic recovery; rebuilding our exceptional city services; increasing access to affordable housing; reimagining public safety; and greater social/racial/economic justice.

I'm endorsed by: Senator Ben Allen, Assemblymember Richard Bloom, Board of Equalization, Tony Vazquez, Los Angeles County Supervisor Sheila Kuehl, and a broad coalition of community leaders, renters, homeowners and working families.

As you learn more about me, I hope to earn your support too.

Other Candidates: City Council 2-Yr

Election Calendar

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[Top 5 FAQs on November 2020 Election](#)

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No. S263972

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

CITY OF SANTA MONICA,
Defendant and Appellant,

v.

PICO NEIGHBORHOOD ASSOCIATION; MARIA LOYA,
Plaintiffs and Respondents.

**[PROPOSED] ORDER GRANTING CITY OF SANTA
MONICA'S MOTION FOR JUDICIAL NOTICE**

After a Decision by the Court of Appeal
Second Appellate District, Division Eight, Case No. B295935
Los Angeles County Superior Court Case No. BC616804
The Hon. Yvette M. Palazuelos, Judge Presiding

The Court grants the City's motion and takes judicial
notice of:

- (A) the certified transcript of the oral argument presented
to the Court of Appeal in this case;
- (B) excerpts from the Official Canvass Certificates and
Official Statements of Votes Cast by Precinct for the
City of Santa Monica election held in November 2020;
and
- (C) the official statements of the candidates who won
Council seats in 2020.

IT IS SO ORDERED.

Dated: _____, 2021

The Honorable Tani Cantil-Sakauye
Chief Justice of the Supreme Court of California

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PROOF OF SERVICE

I, Daniel Adler, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years, and I am not a party to this action. My business address is 333 South Grand Avenue, Los Angeles, California 90071-3197. On March 22, 2021, I served:

CITY OF SANTA MONICA'S MOTION FOR JUDICIAL NOTICE; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF KAHN A. SCOLNICK; AND [PROPOSED] ORDER

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

- ☒ **BY ELECTRONIC SERVICE:** A true and correct copy of the above-titled document was electronically served on the persons listed on the attached service list.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 22, 2021.



Daniel R. Adler

Respondents' Counsel**Method of service**

Morris J. Baller (48928)
Laura L. Ho (173179)
Anne P. Bellows (293722)
GOLDSTEIN, BORGEN,
DARDARIAN & HO
300 Lakeside Dr., Suite 1000
Oakland, California 94612
Tel: 510-763-9800

Electronic service

Kevin Shenkman (223315)
Mary Hughes (222662)
SHENKMAN & HUGHES PC
28905 Wight Road
Malibu, California 90265
Tel: 310-457-0970

Electronic service

Milton Grimes (59437)
LAW OFFICES OF MILTON
C. GRIMES
3774 West 54th Street
Los Angeles, California 90043
Tel: 323-295-3023

Electronic service

R. Rex Parris (96567)
Ellery Gordon (316655)
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534
Tel: 661-949-2595

Electronic service

Robert Rubin (85084)
LAW OFFICE OF ROBERT
RUBIN
237 Princeton Avenue
Mill Valley, CA 94941-4133
Tel: 415-298-4857

Electronic service

Trial court

Hon. Yvette M. Palazuelos
Judge Presiding
Los Angeles County Superior
Court
312 North Spring Street
Los Angeles, CA 90012
Tel: 213-310-7009

Mail service